

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
COOKEVILLE DIVISION

JEFFREY W. TUNKS,

}

Plaintiff

}

v.

}

CITY OF COOKEVILLE, et al.

NO. 2:07-CV-0065

OPEN

Judge Haynes

Defendants

}

**MOTION TO DENY DEFENDANTS RANDALL WEIKER, DANNY DYER,  
MARK S. WEBB, CITY OF COOKEVILLE AND THE COOKEVILLE POLICE  
DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT WITHOUT  
PREJUDICE TO REFILEING**

*This motion  
is DENIED  
for the  
reasons  
set forth  
in  
defendant's  
response.*

*Well done  
NED  
11-8-10*

Comes the Plaintiff, by and through his Attorney, and respectfully requests this Court to enter an Order denying Defendants' Motion for Summary Judgment without prejudice to refiling after discovery is complete pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

Alternatively, the Plaintiff would request this Court, again pursuant to Rule 56(f) to "order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken"; or, pursuant to subsection (3) "issue any other just Order".

Plaintiff would rely upon the attached Affidavit of his Counsel. This Affidavit is filed pursuant to the holding in Comm. for the 1<sup>st</sup> Amendment v. Campbell, 962 F.2d 1517, 1522 (10<sup>th</sup> Cir. 1992) that "a party seeking to defer a ruling on Summary Judgment under Rule 56(f) must file an Affidavit that explains why facts precluding Summary Judgment cannot be presented. This includes identifying the probable facts not available and what steps have been taken to obtain these facts". It is incumbent upon the non-